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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. **2010-202**

13 **KENNETH DWAYNE FANNIN**
14 954 Crestview
Atlanta, TX 75551

ACCUSATION

15 Registered Nurse License No. 679959

Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
19 official capacity as the Interim Executive Officer of the Board of Registered Nursing ("Board"),
20 Department of Consumer Affairs.

21 2. On or about May 31, 2006, the Board issued Registered Nurse License Number
22 679959 to Kenneth Dwayne Fannin ("Respondent"). Respondent's registered nurse license
23 expired on November 30, 2007, and has not been renewed.

24 **STATUTORY PROVISIONS**

25 3. Business and Professions Code ("Code") section 2750 provides, in pertinent part, that
26 the Board may discipline any licensee, including a licensee holding a temporary or an inactive
27 license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing
28 Practice Act.

4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.

5. Code section 2761, subdivision (a)(4), states that the Board may take disciplinary action against a certified or licensed nurse for unprofessional conduct, which includes, but is not limited to, denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license or certificate by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action.

COST RECOVERY

6. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

CAUSE FOR DISCIPLINE

(Disciplinary Action by the Texas Board of Nurse Examiners)

7. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (a)(4), on the grounds of unprofessional conduct. On or about February 1, 2007, pursuant to the Order of the Board by the Texas Board of Nurse Examiners ("Texas Board") in the disciplinary proceeding titled *In the Matter of Registered Nurse License Number 700967 issued to KENNETH DWAYNE FANNIN*, the Texas Board accepted Respondent's voluntary surrender of his license to practice registered nursing in the state of Texas. A true and correct copy of the Order of the Texas Board is attached as exhibit "A" and incorporated herein by reference. The Texas Board's acceptance of the voluntary surrender of Respondent's license was based, in part, on the following:

1 a. On June 9, 2006, the Texas Board initiated an investigation into allegations that on or
2 about April 16, 2006, through April 21, 2006, while employed as a Registered Nurse with Quest
3 Group, Inc. Frisco, Texas, and assigned at UT Southwestern Medical Center, St. Paul, Dallas,
4 Texas, Respondent withdrew Demerol 25 mg, Demerol 50 mg, and Demerol 75 mg from the
5 Medication Dispensing System ("Pyxis") for patients, without valid physicians' orders.

6 b. On November 29, 2006, the Texas Board initiated an investigation into allegations
7 that on or about September 29, 2006, while employed as a registered nurse with TruStaff,
8 Cincinnati, Ohio, and assigned at Arlington Memorial Hospital, Arlington, Texas, Respondent:

- 9 • Lacked fitness to practice professional nursing, in that Respondent was not
10 functioning appropriately, or within his normal work pattern.
- 11 • Withdrew Hydromorphone from the Medication Dispensing System (Pyxis) for
12 patients without valid physicians' orders.
- 13 • Withdrew Hydromorphone from the Pyxis for patients, but failed to document, or
14 accurately document the administration of the medications in the patients'
15 Medication Administration Records and/or Nursing Notes.
- 16 • Misappropriated Hydromorphone from the facility and patients thereof.
- 17 • Withdrew Hydromorphone from the Pyxis for patients, but failed to follow the
18 facility's policy and procedures regarding wastage of any of the unused portions
19 of the medications.

20 c. On December 6, 2006, the Texas Board initiated an investigation into allegations that
21 on or about November 4, 2006, through November 13, 2006, while employed as a Registered
22 Nurse with Wadley Regional Medical Center, Texarkana, Texas, Respondent:

- 23 • Withdrew Demerol from the Pyxis for patients without valid physician's orders.
- 24 • Withdrew Demerol from the Pyxis for patients, but failed to document, or
25 accurately document the administration of the Demerol in the patient's medical
26 records.
- 27 • Misappropriated Demerol from the facility and patients thereof.

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1 d. On January 16, 2007, Respondent returned Registered Nurse License Number 700967
2 and submitted a statement to the Texas Board voluntarily surrendering the right to practice
3 professional nursing in Texas. Respondent's statement, received by the Board on January 16,
4 2007, was attached and incorporated by reference as a part of the Order.

5
6 e. The Texas Board found that there existed serious risks to public health and safety as a
7 result of Respondent's impaired nursing care due to intemperate use of controlled substances or
8 chemical dependency.

9
10 **PRAYER**

11 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
12 and that following the hearing, the Board of Registered Nursing issue a decision:

13 1. Revoking or suspending Registered Nurse License Number 679959, issued to
14 Kenneth Dwayne Fannin;

15 2. Ordering Kenneth Dwayne Fannin to pay the Board of Registered Nursing the
16 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
17 Professions Code section 125.3; and
18

19 3. Taking such other and further action as deemed necessary and proper.

20
21 DATED: 10/12/09

for Stacie Benum
LOUISE R. BAILEY, M.Ed., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

EXHIBIT A

BEFORE THE BOARD OF NURSE EXAMINERS
FOR THE STATE OF TEXAS

In the Matter of Registered Nurse License Number 700967 §
issued to KENNETH DWAYNE FANNIN §

ORDER OF THE BOARD

On this day, the Board of Nurse Examiners for the State of Texas, hereinafter referred to as the Board, accepted the voluntary surrender of Registered Nurse License Number 700967, issued to KENNETH DWAYNE FANNIN, hereinafter referred to as Respondent. This action was taken in accordance with Section 301.453(c), Texas Occupations Code.

Respondent waived representation by counsel, informal conference, notice and hearing.

The Board makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Respondent is currently licensed to practice professional nursing in the State of Texas.
2. Respondent waived representation by counsel, informal conference, notice and hearing.
3. Respondent received an Associate Degree in Nursing from Texarkana Community College, Texarkana, Texas, on May 21, 2003. Respondent was licensed to practice professional nursing in the State of Texas on October 14, 2003.

4. Respondent's professional employment history includes:

10/03 - 09/05	Staff RN	St. Michael's Hospital Texarkana, Texas
07/05 - 03/06	RN	Medical Staffing Network Texarkana, Texas
09/05 - 10/06	RN Travel Nurse	Trauma One Atlanta, Texas

Respondent's professional employment history (continued):

09/05 - 02/06	Staff RN	Good Sheppard Medical Center Longview, Texas
01/06 - Unknown	RN	Quest Group, Inc. Frisco, Texas
05/06 - 06/06	RN	Cogent Healthcare Texarkana, Texas
06/06 - Unknown	RN	TruStaff Cincinnati, Ohio
10/06 - 11/06	Staff RN	Wadley Regional Medical Center Texarkana, Texas
11/06 - Present	Unknown	

5. On or about April 22, 2003, Respondent was issued an Order of Conditional Eligibility by the Board of Nurse Examiners for the State of Texas. A copy of the Order is attached and incorporated by reference as part of this Order.
6. On June 9, 2006, the Board initiated an investigation into allegations that on or about April 15, 2006 through April 21, 2006, while employed as a Registered Nurse with Quest Group, Inc., Frisco, Texas, and assigned at UT Southwestern Medical Center - St. Paul, Dallas, Texas, Respondent withdrew Demerol 25mg, Demerol 50mg and Demerol 75mg from the Medication Dispensing System (Pyxis) for patients, without valid physicians' orders.
7. On November 29, 2006, the Board initiated an investigation into allegations that on or about September 29, 2006, while employed as a Registered Nurse with TruStaff, Cincinnati, Ohio, and assigned at Arlington Memorial Hospital, Arlington, Texas, Respondent:
 - lacked fitness to practice professional nursing, in that Respondent was not functioning appropriately, or within his normal work pattern.
 - withdrew Hydromorphone from the Medication Dispensing System (Pyxis) for patients without valid physicians' orders.
 - withdrew Hydromorphone from the Medication Dispensing System (Pyxis) for patients, but failed to document, or accurately document the administration of the medications in the patients' Medication Administration Records and/or Nursing Notes.
 - misappropriated Hydromorphone from the facility and patients thereof.

- withdrew Hydromorphone from the Medication Dispensing System (Pyxis) for patients, but failed to follow the facility's policy and procedures regarding wastage of any of the unused portions of the medications.
8. On December 6, 2006, the Board initiated an investigation into allegations that on or about November 4, 2006 through November 13, 2006, while employed as a Registered Nurse with Wadley Regional Medical Center, Texarkana, Texas, Respondent:
- withdrew Demerol from the Medication Dispensing System (Pyxis) for patients without valid physician's orders.
 - withdrew Demerol from the Medications Dispensing System (Pyxis) for patients, but failed to document, or accurately document the administration of the Demerol in the patient's medical records.
 - misappropriated Demerol from the facility and patients thereof.
9. On January 16, 2007, Respondent returned Registered Nurse License Number 700967 and submitted a statement to the Board voluntarily surrendering the right to practice professional nursing in Texas. Respondent's statement, received by the Board on January 16, 2007, is attached and incorporated by reference as part of this Order.
10. The Board policy implementing Rule 213.29 in effect on the date of this Agreed Order provides discretion by the Executive Director for consideration of conditional reinstatement after proof of twelve (12) consecutive months of abstinence from alcohol and drugs followed by licensure limitations/stipulations and/or peer assistance program participation.
11. The Board finds that there exists serious risks to public health and safety as a result of impaired nursing care due to intemperate use of controlled substances or chemical dependency.

CONCLUSIONS OF LAW

1. Pursuant to Texas Occupations Code, Sections 301.451-301.555, the Board has jurisdiction over this matter.
2. Notice was served in accordance with law.
3. The evidence received is sufficient to prove violation of Section 301.452(b)(9),(10)&(13), Texas Occupations Code, and 22 TEX. ADMIN. CODE §§217.11(1)(A),(D)(ii)&(iv) and 217.12(1)(B)&(E),(4),(6)(G)&(10)(C).
4. Under Section 301.453(c), Texas Occupations Code, the Board has the authority to accept the voluntary surrender of a license.

5. Under Section 301.453(d), Texas Occupations Code, the Board may impose conditions for reinstatement of licensure.
6. Any subsequent reinstatement of this license will be controlled by Section 301.452 (b), Texas Occupations Code, and 22 TAC §§213.26-.29, and any amendments thereof in effect at the time of the reinstatement.

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ORDER

NOW, THEREFORE, IT IS ORDERED that the voluntary surrender of Registered Nurse License Number 700967, heretofore issued to KENNETH DWAYNE FANNIN, to practice professional nursing in the State of Texas, is accepted by the Executive Director on behalf of the Board of Nurse Examiners. In connection with this acceptance, the Board imposes the following conditions:

1. RESPONDENT SHALL NOT practice professional nursing, use the title of registered nurse or the abbreviation "RN" or wear any insignia identifying himself as a registered nurse or use any designation which, directly or indirectly, would lead any person to believe that RESPONDENT is a registered nurse during the period in which the license is surrendered.
2. RESPONDENT SHALL NOT petition for reinstatement of licensure until: one (1) year has elapsed from the date of this Order; and, RESPONDENT has obtained objective, verifiable proof of twelve (12) consecutive months of sobriety immediately preceding the petition.
3. Upon petitioning for reinstatement, RESPONDENT SHALL satisfy all then existing requirements for relicensure.

IT IS FURTHER AGREED and ORDERED that this Order SHALL be applicable to Respondent's multistate licensure privilege, if any, to practice professional nursing in compact states.

Effective this 18 day of February, 2007.

BOARD OF NURSE EXAMINERS
FOR THE STATE OF TEXAS

By: Katherine A. Thomas
Katherine A. Thomas, MN, RN
Executive Director on behalf
of said Board.

700967:210



: certify this to be a true copy of the
records on file with the Texas Board
of Nursing.

Date:

Signed:

12-2-08
[Signature]